

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MICHAEL ALAN YOCOM,

Plaintiff,

v.

TINA FOSS, et al.,

Defendants.

Case No. [19-cv-02949-JST](#)

ORDER OF DISMISSAL

Plaintiff, a person incarcerated at Atascadero State Hospital, has filed a *pro se* action pursuant to 42 U.S.C. § 1983. On January 3, 2022, the Court screened Plaintiff's first amended complaint.¹ The Court found that the amended complaint failed to state cognizable claims, proffered vague and conclusory allegations, and violated Fed. R. Civ. P. 20's joinder rules. The Court also noted that the amended complaint's claim that Plaintiff has been denied medical treatment was contradicted by the allegations in the complaint that indicate that Plaintiff has received significant medical treatment. ECF No. 46. The Court dismissed the amended complaint with leave to amend to address the identified deficiencies and ordered Plaintiff to file an amended complaint by February 3, 2022. ECF No. 46. On February 17, 2022, Plaintiff filed an objection to the dismissal, stating that he has no ability to amend the complaint because Defendants have destroyed his case files and have transferred him to Atascadero State Hospital; that he disagrees with the undersigned's rulings and that this Court has ignored Plaintiff's consistent statements of


¹ In the initial complaint, Plaintiff alleged that, while he was housed at SVSP from September 2018 to January 2020, SVSP warden T. Foss¹ refused to provide treatment for his serious medical needs. ECF Nos. 1, 10. On March 23, 2021, the Court denied defendant Foss's motion for summary judgment for failure to exhaust administrative remedies but granted defendant Foss's motion to dismiss the complaint for failure to state an Eighth Amendment claim. ECF No. 31. The Court dismissed the initial complaint with leave to amend. ECF No. 31.

1 distress and his need for hospitalization; that he has been denied all medical care; and that he
2 requires evaluation for immediate gastrointestinal and orthopedic surgery. ECF No. 47.

3 Plaintiff has not filed a second amended complaint, and the deadline to do so has long
4 since passed. If Plaintiff's case files were destroyed, he may bring suit against defendants for
5 interfering with his First Amendment right to access the courts. However, this action cannot
6 proceed without an operative complaint, regardless of the reason for failing to file an amended
7 complaint. Accordingly, this action is DISMISSED without prejudice for failure to file a second
8 amended complaint.² The Clerk shall enter judgment in favor of Defendants and against Plaintiff,
9 and close the case.

10 **IT IS SO ORDERED.**

11 Dated: March 28, 2022

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13 JON S. TIGAR
14 United States District Judge

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² Any motion to reopen this action must be accompanied by a proposed second amended complaint.